

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

JUXTACOMM-TEXAS SOFTWARE, LLC,

Plaintiff,
v.

AXWAY, INC., et al.,

Defendants.

Civil Action No. 6:10-CV-00011 (LED)

JURY TRIAL DEMANDED

**LAWSON'S REPLY IN SUPPORT OF ITS MOTION TO MODIFY THE DOCKET
CONTROL ORDER AND VACATE THE DEADLINE FOR LAWSON TO SUBMIT A
REBUTTAL REPORT ON ISSUES OF DAMAGES PENDING DECISION ON
LAWSON'S MOTION TO STRIKE THE DANSKY REPORT**

Defendants Lawson Software, Inc. and Lawson Software Americas, Inc. (collectively, “Lawson”) submit this Reply in Support of Lawson’s Motion To Modify The Docket Control Order And Vacate The Deadline For Lawson To Submit A Rebuttal Report On Issues Of Damages Pending Decision On Lawson’s Motion To Strike The Dansky Report (“Motion to Modify the Docket Control Order”) (Dkt. # 655).

In its opening paper, Lawson requested that the Court vacate the due date for Lawson’s rebuttal report on damages, pending a ruling on Lawson’s Motion to Strike, because it would be wasteful for Lawson to have to prepare a rebuttal damages report in response to an incomplete opening report that does not even disclose a royalty rate, royalty number, or damages theory.¹

¹ Although the current due date listed in the Docket Control Order (Dkt. No. 604) Continued on following page

In its response, JuxtaComm has now acknowledged that its opening report is indeed incomplete, and has moved to serve a supplemental report that discloses a damages theory.² This August 27, 2011, supplemental report would supersede JuxtaComm's initial August 5, 2011, expert report. JuxtaComm has stated that it would be agreeable to Lawson submitting a rebuttal report in response to this report on September 30, 2011. Lawson intends to oppose JuxtaComm's motion to serve this untimely supplemental report for the reasons stated in its co-pending papers.

Under these circumstances, however, it is now even more likely than ever that any rebuttal report that Lawson submits on September 9, 2011, (i.e., in response to JuxtaComm's initial August 5, 2011, expert report) would be a wasted effort, regardless of who prevails on the underlying motions. If Lawson prevails on its motion to strike JuxtaComm's first report and preclude Lawson from offering expert testimony at trial, JuxtaComm's initial report will be null and void, and a September 9, 2011, rebuttal report would be wasted. If JuxtaComm prevails on its Motion to Supplement, JuxtaComm's initial report would be superseded, and a September 9, 2011, rebuttal report served in response to that initial report would again be wasted. Accordingly, there is no reason to force Lawson to submit a rebuttal report to JuxtaComm's initial, incomplete, August 5, 2011, report.

Lawson attempted to explain this situation to JuxtaComm and obtain its agreement to move the current response date to the September 30, 2011—the very date suggested by

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for Lawson's rebuttal report is September 2, 2011, the parties previously agreed to an extension to September 9, 2011. *See* Exh. 1 to the Declaration of Mandy Pezzano filed in support of this motion ("Exh. 1"), August 30, 2011, email correspondence between JuxtaComm and Lawson.

² JuxtaComm's Motion For Leave To Serve Supplemental Expert Report Of Michael Dansky As To Defendants Lawson Software, Inc. and Lawson Software Americas, Inc. ("Motion to Supplement") (Dkt. # 666) at 2; JuxtaComm's Response To Defendant Lawson Software, Inc. and Lawson Software Americas, Inc.'s Motion To Strike And Motion To Modify The Docket Control Order ("Opp.") (Dkt. # 667) at 2, 6, 9, 13.

JuxtaComm in its opposition.³ JuxtaComm refused, and stated that it would only agree to move the current September 9, 2011, response date out to September 30, 2011, if Lawson withdrew its motion to strike.⁴ That position is an unreasonable one. Lawson has a valid motion to strike, and JuxtaComm should not threaten to force Lawson to prepare a wasteful, needless rebuttal expert report, for the sole purpose of exerting pressure on Lawson to withdraw that motion.

For all of these reasons, Lawson respectfully requests that the Court vacate the current due date for Lawson's expert report in the Docket Control order pending the resolution of Lawson's motion to strike. Lawson further suggests that because JuxtaComm has stated that it would not be prejudiced by a September 30, 2011, date for a rebuttal report, that the Court enter that date as the new due date for Lawson's rebuttal report on the Docket Control Order.⁵ Lawson has submitted a modified proposed order to that effect.

Dated: August 30, 2011.

Respectfully submitted,

/s/ Paul E. Torchia _____

Josh A. Krevitt
Paul E. Torchia
Steven Michael Kalogeras
Gibson Dunn & Crutcher - NYC

³ See Exh. 1, August 30, 2011, email correspondence between JuxtaComm and Lawson.

⁴ *Id.*

⁵ Lawson does not, by proposing this new due date, waive or withdraw its motion to strike Mr. Dansky's report and to preclude JuxtaComm from offering damages expert testimony at trial. Nor does Lawson agree to JuxtaComm's untimely motion to supplement its initial report. Rather, Lawson's sole objective is to avoid the waste of submitting, while these motions are pending, a rebuttal report addressing an old expert report that both parties agree is incomplete.

200 Park Ave., 48th Floor
New York, NY 10166
Telephone: (212) 351-4000
Facsimile: (212) 351-4035
jkrevitt@gibsondunn.com
ptorchia@gibsondunn.com
skalogeras@gibsondunn.com

Mark N. Reiter
Texas Bar No. 16759900
Mandy Pezzano
Texas Bar No. 24074886
Gibson Dunn & Crutcher – Dallas
2100 McKinney Avenue
Suite 1100
Dallas, TX 75201-6912
Telephone: (214) 698-3100
Facsimile: (214) 571-2900
mreiter@gibsondunn.com
mpezzano@gibsondunn.com

Otis W. Carroll, Jr.
Texas Bar No. 03895700
Ireland Carroll & Kelly
6101 S. Broadway
Suite 500
Telephone: 903.561.1600
Facsimile: 903.582.1071
ocarroll@icklaw.com

*Counsel for Defendants Lawson Software, Inc.
and Lawson Software Americas, Inc.*

CERTIFICATE OF SERVICE

I certify that the foregoing document was filed electronically on August 30, 2011 pursuant to Local Rule CV-5(a) and has been served on all counsel of record who have consented to electronic service.

/s/ Paul E Torchia
Paul E. Torchia